IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SHOW CAUSE NOTICE NO.1361 OF 2005
IN
CONTEMPT PETITION NO.48 OF 2004
IN
APPEAL NO.685 OF 2004
IN
CHAMBER SUMMONS NO.1038 OF 2004
IN
MISCELLANEOUS APPLICATION NO.1 OF 2004
IN
TESTAMENTARY SUIT NO.17 OF 1996
IN
TESTAMENTARY PETITION NO.132 OF 1996

Illa Vipin Pandya. ...Petitioner.
Vs.
Smita Ambalal Patel. ...Respondent.

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Mr.S. H. Doctor, Senior Advocate with Mr. J.P. Sen and Mr.I. D. Cruz i/b. Mehta & Girdharilal for the Petitioner.
Ms.Smita Patel in person.

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CORAM : DR.D.Y.CHANDRACHUD, J.

October 5, 2006.

P.C.

The facts, in so far as they are material for a decision on the Contempt Petition are thus:

A Testamentary Petition has been instituted by the

Petitioner before the Court which has now been converted into a suit. The Plaintiff, it is alleged, is the wife of the deceased and she has applied for Letters of Administration. The Caveatrix who is the contemnor before the Court has contested the status of the Petitioner. An Advocate who was formerly representing the Petitioner had taken out a perjury notice against the Petitioner which is pending disposal. The Respondent took out a Chamber Summons in the Testamentary Suit inter alia for seeking (i) a certified copy of Miscellaneous Application No.1 of 2004 in the aforesaid Testamentary Suit and (ii) a transcript of the two audio cassettes containing a telephonic conversation that is alleged to have taken place between the Petitioner and her former Advocate. The Chamber Summons was dismissed by a Learned Single Judge on 23rd September 2004 against which an appeal was carried to the Division Bench. By an order dated 31st March 2005, the Division Bench allowed the appeal in part by granting to the Respondent herein relief as prayed for in prayer clause (a) of the Chamber Summons which was to the effect that a certified copy of the Miscellaneous Application be provided by the Registry. Relief in terms of prayer clause (b), which related to furnishing a transcript of the audio recording of the telephonic conversation was

declined. The Division Bench, on the application of Counsel appearing on behalf of the Petitioner stayed the operation of the order for a period of four weeks.

2. The period of four weeks expired at midnight on 28th April 2005. The Petitioner filed a Special Leave Petition before the Supreme Court to challenge the order of the Division Bench. A notice was, according to the Petitioner, served on the Respondent/contemnor on 27th April 2005 at 14.37 hours intimating to the Contemnor that the Special Leave Petition would be mentioned before the Supreme Court on 28th April 2005. This was followed by a further communication also of 27th April 2005 which according to the Petitioner was sent to the Respondent at 16.19 hours on the same day intimating that the matter would be mentioned before the Supreme Court on 29th April 2005 2005. What happened thereafter is now borne out by the report submitted by the Prothonotary & Senior Master pursuant to the order passed in these proceedings on 8th July 2005. According to the report submitted by the Prothonotary & Senior Master, the Respondent drew the attention of the Registry to the order of the Division Bench dated 31st March 2005 and sought a certified copy from the Section

Officer in the Decree Department. The Section Officer and the Respondent are stated to have attended the office of the Prothonotary & Senior Master at 3.30 p.m. on 27th April 2005. The report states that the Prothonotary & Senior Master directed the Section officer to obtain copies of the documents, seal them and hand them over to the Respondent on 28th April 2005. The Prothonotary & Senior Master has stated thus on what was represented to her by the Respondent/Contemnor:

> "I say that the Respondent herein contended before me that 27-04-2005 is the last date as per the Division Bench order dt. 31-3-2005 and that the certified copies should be given to her on 27-4-2005 itself. As per her calculation going as per weeks, the time expires on 27-4-2005 and that till the time she approached me on 27-4-2005, she was not served with any papers pertaining to the SLP, if any, filed in the Supreme Court. She also stated that if certified copies are not given to her on 27-4-2005, she will sleep (stay) in the High Court itself till she gets the certified copies."

The Prothonotary & Senior Master, however, states that she calculated the period of four weeks and informed the Respondent that since the stay was to expire after office hours on 28th April 2005, the Respondent would be entitled to get copies on 28th April 2005 after office hours as the Facilitation Centre is open till 10 p.m. The Respondent accordingly collected certified copies from the

Decree Department on 28th April 2005.

3. Counsel appearing on behalf of the Petitioner has adverted to the conduct of the Respondent-Contemnor. Reliance has been placed on that part of the report of the Prothonotary & Senior Master which has been extracted hereinabove and it has been urged that the Respondent made an incorrect representation to the Prothonotary & Senior Master that the stay was to expire on 27th April 2005. It is submitted that the office was forced to part with certified copies of the Miscellaneous Application on a wrong representation.

4. By the time the Supreme Court was moved on 29th April 2005, a certified copy had already been obtained by the Respondent on 28th April 2005. The Supreme Court extended the interim order passed by this Court till the allotted date of the matter. Counsel appearing on behalf of the Petitioner has also placed before the Court, a copy of the subsequent order of the Supreme Court dated 12th September 2005 by which leave to appeal granted. There was an interim direction to the effect that the documents which have been taken after the High Court's order

shall not be utilized in any proceedings without the leave of the Supreme Court.

5. In considering as to whether any case for the invocation of the contempt jurisdiction is made out, it is necessary to note that the relief sought in the Chamber Summons was for a direction to the office of the Court to furnish to the Respondent-Contemnor, a certified copy of the Miscellaneous Application and a transcript of the audio cassettes. The Division Bench allowed the first part of the Chamber Summons which related to the furnishing of a certified copy of the Miscellaneous Application. Under the orders of the Division Bench, the Registry was directed and ordered to furnish copies thereof. The order was, however, stayed for a period of four weeks. Excluding the 31st day of March 2005 which was the date on which the order was passed, the stay would have expired at midnight between 28th and 29th April 2005. The Prothonotary & Senior Master was moved by the Respondent on 27th April 2005 at about 3.30 p.m. The Respondent has contested the statement made on behalf of the Petitioner that the facsimile communication informing her that the Supreme Court was being moved on 28th April 2005 was served on her at 14.37 hours on 27th

December 2005. The Respondent contests the statement that the subsequent communication was served on her on the same day at 16.19 hours. For the purposes of these proceedings, it is not necessary to enquire into this issue any further, since the facts as they emerge before the Court would show that on 27th April 2005, the Prothonotary & Senior Master was duly apprised of the order of the Division Bench. The view which the Prothonotary & Senior Master took was that the stay would expire after office hours on 28th April 2005. It is in pursuance of this view of the Prothonotary & Senior Master that an officer of the Court was directed by the Prothonotary that a certified copy of the Miscellaneous Application be made available to the Respondent after the close of office hours on 28th April 2005 since the Facilitation Centre of the Court remains open upto 10 p.m. The view of the Registry may not be entirely correct since the stay that was granted by the Division Bench would continue till midnight between 28th and 29th April 2005. That, however, would not constitute a valid foundation for the invocation of the contempt jurisdiction of this Court. At the highest, the report of the Prothonotary & Senior Master would show how an officer of the Court perceived of a persistent litigant. But, that is no reason for the Court to invoke the exercise of the contempt jurisdiction.

True, the Respondent has been found guilty of contempt on a previous occasion and by an order dated 26th March 2001 passed by the Supreme Court, the sentence of imprisonment has been suspended for a period of five years subject to observance of certain conditions. There is, however, no contempt of Court in the facts of the present case.

6. In so far as prayer clauses (b) and (c) of the Chamber Summons are concerned, no separate orders are required in the exercise of the contempt jurisdiction since the correctness of the order passed by the Division Bench on 31st March 2005 is the subject matter of an appeal which is pending before the Supreme Court. As already noted earlier, by an order dated 12th September 2005, the Respondent has been directed by the Supreme Court not to utilise the documents which were taken after the order of this Court dated 31st March 2005 in any proceedings without the leave of the Supreme Court.

7. On the balance, I am of the view that a case for the invocation of contempt jurisdiction is not made out. The notice is discharged. The Petition is accordingly disposed of.

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